

**SOC-OR-021**

**CRIMINOGENIC RISK OF DERIVATIVE PRODUCT WITHIN FINANCIAL MARKET  
POLICY (AN OVERVIEW MARXIS CRIMINOLOGY)**

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Along with the growth of globalization worldwide, financial sector is also developing, especially financial market. Financial market is developing in terms of its widespread and variant of products being traded. Derivative product is one of them. This research constructs arguments on derivative products as legal product in financial market contribute to a certain form of crime. This research uses marxist criminology perspective, global superstructure, which adopts Marx's base-superstructure, crime of domination and criminogenic concept. As a result, this study shows, derivative products in stock market are indeed criminogenic in terms of criminal intention, rules applied and the financial market's system itself.

**Keywords:** Derivative Product, Financial Market, Criminogenic, Global Superstructure, Crime of Domination

## **1. INTRODUCTION**

In financial market, there's a term known as security, which is actually a certificate generated in fund trading (Nasaruddin, 2001). The Law Number 8 of 1995 on Financial market defines it as (1) promissory notes; (2) commercial paper; (3) shares; (4) bonds; (5) evidences of indebtedness; (6) participation units of collective investment contracts; (7) futures contracts related to securities; and (8) all derivatives of securities.

One of the commonly traded securities in the financial market is derivative, which is a contract between two or more people to comply someone's wishes to sell or to buy assets. To decide the price, someone needs to observe the movements of derivatives from the onset. Surprisingly, they can trade the observation on the financial market and it sounds appealing. Regardless the fact that the only thing they try to sell or buy is an assumption and many people fail to notice that. It becomes like a promise with price and the price very much depends on market situation (Swan, 2000).

The price that is eventually agreed usually comes from buyers' subjectivity. If they are on board with the price, they can proceed with an agreement. It will be potentially profitable when the traders can keep their promises. But, on the other hand it can be worthless when the trade goes off side of what they expect. And such situation is too risky for companies when they use such agreement as their operational assets. When it doesn't hold any value, they need to pay a failure payment (default) and it may collapse at the end.

If we observe such incidence using the criminology perspective, it holds noticeably a serious problem. In criminology, we have been familiar with four entities, such as *perpetrators*, *victims*,

*crime, and people reaction.* Derivative products are potential to inflict damage and cause victims. Thus, it can be defined as a crime because crime is defined as an action from group or individual that can produce losses for society, such as *material, physical, or psychological* (Mustofa, 2010). In economic and financial environment, derivative products are assumed as a kind of revolution, similarly the industrial revolution (Steinherr, 1998)

This research focuses on financial market policies that related to derivative products. It also explains their relation that harbors *criminogenic risks*. The arguments are build on the connections and analysis using Marxism approach.

## 2. RESEARCH METHODOLOGY

This research uses *qualitative predictive approach* to counter social phenomenon in society that we can produce theorization (Burhan, 2007). Design of this research is *descriptive*. We will describe the analysis' result of derivative products and their tendency to qualify a crime. Comprehensively, we gather secondary data from literature reviews, collecting relevant information about financial market in Indonesia. It is different from field research because it is defined as a basic process of determining the research design and it is also used as a source to get further data for analysis (Zed, 2008).

Data analysis is made from argumentation building process of financial market policies, point in case derivative products. As a result, it helps us to make stronger argument. Writers use *marxism* to explain these problems more specifically. It begins from the explanation of capitalism in the problem of derivative product in financial market. Derivative products are analyzed by using *criminogenic concept*, which focus on four items such as *perpetrators, products, regulations, and their losses*.

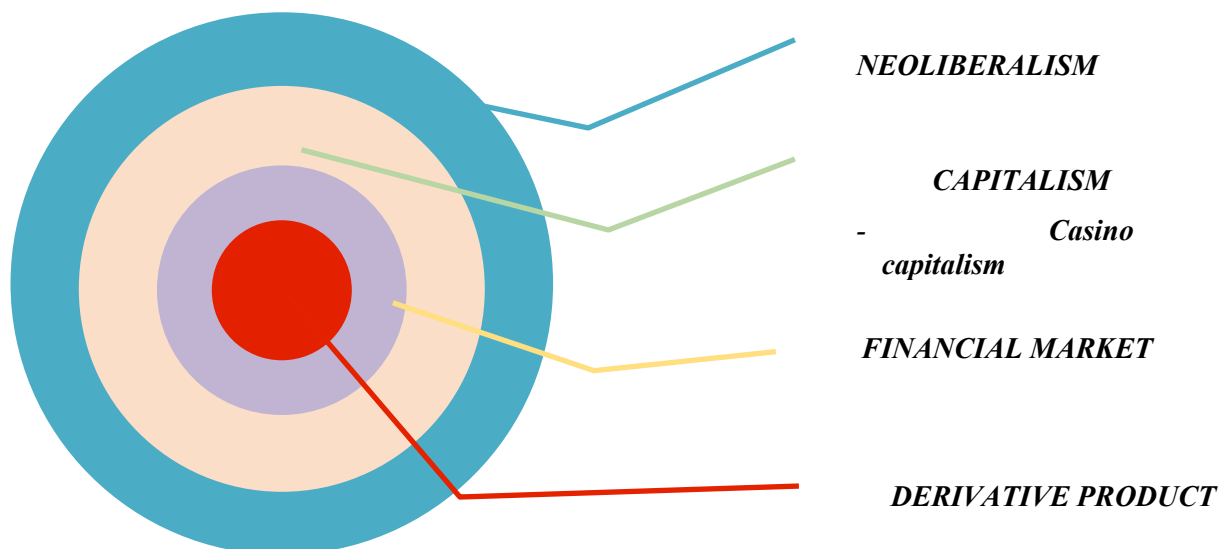


Figure 1 : Framework of Phenomenon Analysis.

First, the analysis will deliver from the statement that “Neoliberalism is an extreme capitalism”. In capitalism, there are the explanation about *casino capitalism* and *global*

*superstructure*. The analysis will expand into criminogenic in financial market. Finally, it'll make a statement that one of their products shows the crime of domination's element.

### 3. RESULT & DISCUSSION

#### 3.1. Neoliberalism

In "*Globalization and It's Discontents*", Joseph E. Stiglitz explains three things that makes *neoliberalism* exist, namely *market liberation*, *deregulation*, and *privatization* (Stiglitz, 2002). *Market liberation* is used to erase trade boundaries and government's intervention in the market. *Deregulation* is needed to support market liberation. Neoliberalism doctrine claims that deregulation is important to control government's intervention in financial markets. At the end, deregulation can make it easier. Ronald Reagan's deregulation is a wellknown example. He issued a law to help military spending by disbursing US\$2 billion, masqueraded as a way to stimulate the US economy. In 1999 Bill Clinton signed a new law to support financial market liberalization. When the Glass-Steagall Act was no longer applied, it was changed into *Gramm-Leach-Bliley Act* or *Financial Services Modernization Act*.

Deregulation practiced by the United States cannot be separated with Alan Greenspan as governor of The Fed since 1987 to 2006. Greenspan received harsh, not one but many, critics because of his *easy-money policy*. His policy gave privileges for certain group of people, including credit approval process. It also helps privatization and tax-cut policy. Privatization is the third pillar, which as Stiglitz explains, is to support neoliberalism.

#### 3.2. Casino Capitalism

Financial market trades a wide range of securities products, including derivative product. It is a derivative of main asset. The absence of state's role -- in charge of market regulation -- gives tendency to the product's owner to act selfish. Moreover, the nature of derivative product makes it quite difficult to handle when something bad happens. Additionally, the game is played based on speculation.

When we talk about speculative game, it seems like we describe *gambling*. Capitalist system helps them growth legally and profitably. The arena of the game is *financial market*. Speculation has become an important weapon in the game. It's almost similar to determine which number will come out, the selection process also similar to gambling. But in reality, economists have pored their theories to cover such speculative using justifications based on data analysis on the so-called investment, not a speculation. Gamblers also analyze their chance from existing data, even simpler.

Susan Strange's analogy reveals that gambling also takes place in huge buildings, which are played by young people who sit behind multiple computer screens, scanning their sights on flickering figures. They play the game that connect virtual markets in one continent to another and are in touch with remote counterparts by phone or other communication gadgets. Their expressions are similar like starring at the *roulette*, waiting flipping coins in red or black, and opening the cards at the casino (Strange 1997).

The Wall Streets believe when they succeed to make global economy like a casino, they are in power to decrease and control the risks. Each player feels like he/she will gain profit from the game that they are fearless to engage with the risks (Moberg, 2008). Gambling at the casino or market is heavily dependent on intuition to pick a choice, but it's completely different. Gamblers must ready to lose, even there's a chance to win the game but their benefit isn't bigger than their

losses. By using Math approach, casino offers game with impossible chance of victory and it's such a great business (Sinn, 2010).

### **3.3. Capitalism and Global Superstructure**

The term *global superstructure* comes from Marx's thought about *base-superstructure*. Marx has said that *base* is a fundamental manifestation in the economic system. In 1800s and even earlier, the economic system was centralized on a production system, which was largely made by the public. Thus, *superstructure* refers to all sectors or domains that exist in the community, such as *institution* (state and family) or *abstract* (conscience and religion) (Magnis-Suseno, 2010).

Marx argued that public institutions were set up by the rulers' interest. Ruling parties have purpose to control the base, such as the production of society (Marx, 1973). The term of *global superstructure* can be assumed as a community organization set up by the rulers to control the production or local economy. In the circle of capitalists, there are structures with major countries (capitalist countries), above minor countries (small countries or developing countries). Global superstructure transforms into an intervention, which is made by the major countries against minor countries.

Global superstructure stands on the regulation, which control the minor countries. When minor countries use the facilities from major countries, they were trapped to follow their regulation for their own intention. In other side, when minor countries don't follow the rules of major countries, they'll face obstacles made available by the major ones. The major party can provoke hatred from their allies to avoid the minor, such as revealing negative issues about the economic development of minor countries. It may affect the investor to reconsider their investment on the particular countries.

Through *Washington Consensus*, capitalist countries seek to influence politic, economic, and social aspects. Iqraq Sulhin reinforced the condition as *Global Pressure of Governance* in his book "*Capitalism and The Future of Indonesia's Anti-Poverty Policy*". He said that globalization could ultimately eliminate political and geographical boundaries of a country. Global power will give impact to the particular policy (Sulhin, 2009). Influence on the political field is necessary to determine the direction of market development. Neo-liberalization activities and structural adjustment through the Washington Consensus sought to minimize the role of the state through privatization, liberalization, deregulation and fiscal austerity in "*pulling back neo-liberalism*" process (Williamson, 2013). This affects the strength of neoliberalism influence to determine the level of financial market interest rates and innovative financial products development. Derivative products are developed by demand of neoliberalism without countries restrictions and geographical barriers in investment process. As part of financial market instrument, they don't need to follow the rules of the country, but their own rules (this case was created by the Federal Reserve in the Americas) and globally accepted (Coleman, 2003).

Direct impact of neoliberalism practice is the emergence of financial markets. Financial markets are introduced in developing countries to rapidly improve their economic growth. However, in fact, it doesn't instantly work magic. The only reason for its presence is to help investors from major countries to invest in minor countries market. It brings about dependence relations between major and minor countries with foreign capital. Consequently, such circumstances can be used by the powerful countries to rake benefit as much as they wish. They also can control and intimidate the countries for their own interest. Included in such practice is the implementation of financial products, especially derivatives.

#### **3.4. Financial Market is Criminogenic**

Some important points in the capitalist system cause specific crimes (Lainer and Henry, 2004). Financial market is a product of capitalism economy. Therefore, derivative products as part of the economy realm can be used as study materials in criminology. Criminology studies recognize the criminogenic concept. This concept tries to explain about another causes of crime.

Criminogenic is a situation of a tendency of an incidence, which turns into a crime. Andrews and Bonta explained that *criminogenic needs* are the dynamic factors of crime occurrence (Andrews and Bonta, 2010). It refers to the situation, such as environment or experience, which possibly makes a personality turn into a crime. On the other hand, criminogenic can be defined as something that supports the creation of crime itself.

The condition of financial markets is known as *criminogenic*. Financial markets can be a place where crime can occur. Criminogenic in the financial market can be derived from the players' intention, rules, and the nature of the financial market itself. The initial motive of financial market players is to get benefits of securities. The selfishness of capitalism also happens in the financial market activities (Bonger, 1994). Financial markets will bring the intentions of the players to get greater profit by using various motives. It leads to crime in the financial market ultimately.

The financial market confounded by the bunch of rules and regulations may avoid the crime crime. But, it is just a camouflage to make a presumption that the market doesn't have contribution in crime. *It's incorrect!* They are aware of the risks but intentionally they do not provide protection for the players. A number of existing rules and regulations established to facilitate the movement of the capitalists to get what they want.

System in financial market has become a factor that supports the creation of selfishness, which is mentioned by Bonger. It is similar to gambling system. Each player acts as a dealer and they are within that system, making them legitimate. Financial institutions and banks also put themselves in the table. Speculation becomes a powerful weapon in the decisive victory. Finally, they need to win more, so that they try to carry out fraud in order to make it happen. Likewise, financial markets are similar with casino as expressed by Susan Strange.

The existence of the financial market is criminogenic. The system nurtures profit-oriented behavior and disobey their enterprises development. We believe that there are several reasons, which make the condition inappropriate. First, gambling system is applied in the financial market system. And the products or systems used in the financial market are similar to the casino environment.

Furthermore, the second is the occurrence of financial crime. It has also been described previously that financial crime can happen because they try to increase profits by fraud, theft, corruption and manipulation. Previously, authors also explained that the financial crime was caused by government policies that provide opportunities for such actions.

The third reason is discrimination issue. Financial market isn't place for all people. It takes a lot of money and knowledge of trading, especially financial instruments. People with huge amount of assets can play in this place and also get tip-off about potential profit. It can be concluded that the financial market is only for *high-end people*.

The last reason is practices in financial market may cause domino-effect financial crisis impacts that even may hit those who have nothing to do with the practices. People who do not play in the financial market will be affected by the crisis. The collateral victims of financial crisis are



suffering from the financial crisis, yet when big corporations or investors get the benefits from the financial market, those people do not get to taste the sweet benefit. It only shows that discrimination and injustice are real in financial market system. Based on those reasons, the authors believe that the financial market is criminogenic because it holds potential to create crime, regardless whether it has been set or not in the regulation.

### **3.5. Derivative Product is a Part of Crime of Domination**

*Crime of economic domination* on derivative products begin with the limitations to access the system. Only certain parties who have sufficient amount of capital that are entitled to join the system as *public financial markets*. It requires specialized knowledge to play with this product, but it's not easy. If someone force to plunge into the system without proper knowledge, chance is slim to none for them to survive. It is impossible for people from the low-bracket to get involved in the system. In other words, it is only welfare improvement for high and higher class of people.

The state is eventually involved in the game as a player, defined it as *crime of government*. The state doesn't perform coercive military action, indeed. However, a set of rules and regulations are enough to force the society to behave like they're meant to be. They are only used to gather the interests of capitalists. It's not really a violation actually, but it such a domination.

Alan Wolfe describes how to manipulate the public consciousness safely. Violence by the state without physical contact can increase the awareness of community, so they can avoid harm and also crime. The context of the public's understanding ultimately is being manipulated by the use of an instrument from its own rules that makes it legitimate. The instrument isn't a prohibition to act, but rather a justification for it. People will think twice or more before they make a decision. If it doesn't comply with existing instruments, they have violated and are considered against the state, even the instruments is set up to support a capitalist activity itself (Quinney, 1979). The state takes the role as a party that gives legitimacy to the capitalists to control the public behavior and awareness so they won't be under threat.

Furthermore, the government already knows how the system works. But the government stops its intervention only by issuing a set of regulation. They set up derivative products that are safe and legal to be traded by the public. They also issue another regulations to simplify trade procedures of derivative products. For example, as discussed earlier, the deregulation proposed by Alan Greenspan also serves as a stimulus for other countries to do the same and facilitate transactions of derivative product.

Another form of crime that appears is *crime of control*, in which the capitalists have to control over law enforcement agencies smoothly, for example by using a provocateur or something similar. The products have a lot of failures but the world still believe and trade it. This relates with an effort to show the economic experts who spoke about the failure of derivative products. Economists who support the application of derivative products are easy to find everywhere while economists who disagree are hardly known by the world community.

Derivative products have a complex layer in order to create a crime in it. As noted earlier, there are *crime of economic domination*, *crime of government*, and *crime of control* in derivative product itself. The system in derivative products has become a crime. Dominance does not only occur in a small sector, but it has rampantly happened globally. The world never feels that it has been subjected and dominated by a system that rotates and moves at the whim of certain people. We believe that the system doesn't dominate by particular human group. It is based on the occurrence of a system failure that ultimately provide tremendous loss for the world. If the system can be

controlled by certain groups of people then at least the losses will not override the group. In fact, the whole society can feel the failure of that system. An example of derivative product failure is the financial crisis in 2008. It indicates that the system of derivative product can't be predicted. Therefore, the system in the derivative product becomes alive and moving by itself well towards profitable or failure.

#### 4. CONCLUSION

Capitalism tries to come up with a new form called the Neoliberal. Neoliberal capitalism is a form of extreme transformation. It became a notion adopted and implemented worldwide. It emphasizes the minimization of power and state authority, especially in economic regulation activities. It brings us to the formation of prices submitted at the market.

The spread of neoliberal is also contributed by separate intervention from powerful countries. It becomes a global term that refers to the superstructure. Their power can be intervened by using the international organization authorities to end neoliberal concept.

So, financial market is one of capitalism product that exists since neoliberalism has been conceived. People spread the idea of neoliberalism, including the financial market. Today, people have made assumptions that it is very important for economic sustainability and also affect the neoliberalist countries. That's a place where capital transactions happen.

Financial markets have a condition called *criminogenic*. It can happen because the market is a place where the crime can grow. Criminogenic in the financial market can be derived from the players' intention, rules, and the nature of the financial market itself.

As long as the existence of neoliberalism concept, the financial market will continue to see its ever-growth. The growth is marked by the product variety at the market.

As a variant of traded product in the financial market, derivatives hold a *criminogenic* tendency of financial markets, which is *crime of domination*. Derivative products also have elements that match crime's qualifications, such as *crime of government* and *crime of control*.

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